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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: EAC 00 121 54531 Office: VERMONT SERVICE CENTER Date: JAN 14 2002

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER: [redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a software development and consulting company with 12 employees and a projected gross annual income of $1,800,000. It seeks to employ the beneficiary as a systems analyst for a three-year period. The director determined that the proffered position qualified as a specialty occupation but denied the petition finding that the petitioner had not established that the beneficiary had a bachelor's degree or its equivalent in the required academic specialty.

On appeal, counsel argues that the beneficiary has the equivalent of a bachelor's degree in computers or a related field. In support of the appeal, counsel has submitted an evaluation performed by a professional credential evaluation service and two employment letters.

The regulation at 8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

> an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Counsel's argument on appeal is not convincing. The record does not establish that the beneficiary has a bachelor's degree or its equivalent.

The petition was initially supported by an evaluation performed by a professional evaluation service that indicated the beneficiary had the equivalent of three years of university-level credit in accounting from an accredited college or university in the United States based on his diploma from the Kakatiya University. The evaluation also indicated that the combination of the three years of education and the beneficiary's three years of experience in the computer field were the equivalent of a bachelor's degree in computer science.

On appeal, counsel has submitted another evaluation performed by another credential evaluation service that indicates that the beneficiary has the equivalent of a bachelor's degree and a master's degree in business administration. The second evaluation

does not indicate whether the beneficiary's work experience was used in the determination. Counsel has also submitted two employment letters that indicate that the beneficiary was employed as a computer programmer/analyst from March 1997 to December 2000.

The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D) describes the methods that a petitioner can use to establish that the beneficiary has the equivalent of a bachelor's degree. The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(3) clearly indicates that evaluations performed by credential evaluators are limited solely to the beneficiary's educational achievements and are not to address the beneficiary's employment. Since the first evaluation submitted by the petitioner considers the alien's employment history, it does not comport with the Service's regulations and is of little value in this proceeding.

The second evaluation submitted by the petitioner on appeal is in direct contradiction to the credential evaluation initially submitted by the petitioner. The second evaluation apparently provides that the beneficiary's education, standing alone, is the equivalent of both a bachelor's and a master's degree in Business Administration. In addition, the petitioner has not submitted any evidence explaining this contradiction or why the first evaluation was inaccurate.

In the Matter of Caron International, Inc., 19 I&N Dec. 791 (Comm. 1988), it was held that an evaluation performed by a credential evaluations service is an advisory opinion only, and where it is not in accord with other information or is in anyway questionable, it may be discounted or given less weight.

Upon review, since the second evaluation submitted by the petitioner is in direct contradiction to the initial evaluation, it carries little or no weight in these proceedings. The petitioner has not even attempted to explain the differences between the evaluations and why one should be accepted over the other. In addition, the second evaluation does not describe how the evaluation was performed. It merely indicates that it was based on original documents.

Finally, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(5) allows the Service to determine whether an alien's education and experience is the equivalent of a bachelor's degree. The regulation provides that three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. The regulation also provides that it must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien

to establish the alien's experience and training is equivalent to academic training, the regulation provides that one of the following types of documentation must be submitted:

1. Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

2. Membership in a recognized foreign or United States association or society in the specialty occupation;

3. Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

4. Licensure or registration to practice the specialty occupation in a foreign country; or

5. Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

While counsel has submitted two employment letters indicating that the beneficiary was employed as a programmer/analyst, counsel has not submitted any of the five types of documentation enumerated above. As a result, it has not been shown that the beneficiary has the equivalent of a bachelor's degree. Therefore, the director's decision will not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.